

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

GROWING SEEDS CHILD DEVELOPMENT
CENTER and TERESA JACKSON
Respondents

Case No.: I-00-40901

FINAL ORDER

I. Introduction

On June 8, 2001 the Government served a Notice of Infraction (No. 00-40901) upon Respondents Growing Seeds Child Development Center and Teresa Jackson, alleging that they violated 29 DCMR 315.3, which specifies the qualifications for the director of a child development center; 29 DCMR 315.4, which specifies the qualifications for teachers at child development centers; and 29 DCMR 325.13, which requires that all employees at child development facilities have an annual health examination and that the physician submit a report stating that the employee is free from tuberculosis and other communicable disease. The Notice of Infraction alleged that the infractions occurred on May 22, 2001 at 3800 14th Street, N.W., and sought a total fine of \$1,500.00 (\$500.00 for each violation).

On June 28, 2001, Respondent filed a timely plea of Admit with Explanation, together with a request for suspension or reduction of the fine. On July 3, 2001, I issued an order permitting the Government to respond to that plea and request within ten days. That deadline has passed without a response from the Government.

II. Summary of the Evidence

With respect to the violation of 29 DCMR 315.3, Respondents admit that no qualified director was present on May 22. Ms. Jackson, the owner of the day care center, states that the director of the center had been out sick since July 2000 and that the inspector issued a “deficiency notice” (a reference to the Statement of Deficiencies and Plan of Correction form attached to the Notice of Infraction) on March 29, 2001. Ms. Jackson states that she had identified a new director in April, who was scheduled to start on May 14. Ms. Jackson’s husband, however, passed away on May 7, and the funeral took place on May 14. Ms. Jackson did not return to work until May 30, and the new director started work on June 4. Ms. Jackson asserts that, but for her husband’s death, the new director would have been on the job on May 22, and there would have been no infraction.

With respect to the violation of 29 DCMR 315.4, Ms. Jackson states that she had sent some of her staff members to various classes so that they would be qualified as teachers and that she had identified three qualified teachers whom she planned to interview in May. The death of her husband made it impossible for her to conduct the interviews as scheduled. Instead, the interviews occurred on June 4, after the re-inspection on May 22. Ms. Jackson states that, due to

a shortage of qualified teachers, she sent staff members to classes, but that they had not yet completed the necessary courses.

With respect to the violation of 29 DCMR 325.13, Ms. Jackson states that, on the day of the re-inspection, she had the appropriate health form, but had taken it home with her to drop off at the inspector's office the next morning. She states that her husband's death was the reason for her not doing so, but the connection between his death on May 7 and her inability to deliver the form to the inspector on May 22 is not clear. The Government, however, has not denied that Ms. Jackson had the form in her possession on May 22.

III. Findings of Fact

1. By their plea of Admit with Explanation, Respondents have admitted violating 29 DCMR 315.3, 315.4 and 325.13 on May 22, 2001.
2. On May 22, 2001, Respondents' child development center did not have a director with the qualifications specified by 29 DCMR 315.3.
3. Respondents' child development center did not have a qualified director during a period that began in July 2000 and ended on June 4, 2001.
4. Ms. Jackson's husband died on May 7, 2001. If he had not died, Respondents would have hired a qualified director who would have been on duty by May 22, 2001.
5. On May 22, 2001, at least two teachers in Respondents' child development center did not have the qualifications mandated by 29 DCMR 315.4.

6. If Ms. Jackson's husband had not died, two qualified teachers could have been hired and on duty by May 22, 2001.
7. On May 22, 2001, Respondents did not have a current health certificate for one employee available at their child development center. The health certificate was at Ms. Jackson's home. Respondents could have arranged for the inspector to see the certificate on or before May 22, either by leaving it at the center or delivering it to the inspector. Respondents have not stated when they provided the health form to the inspector.
8. Respondents have a history of prior violations of the regulations governing child development facilities. In *DOH v. Growing Seeds Child Development Center*, OAH No. I-00-40041 (Final Order May 16, 2000), Respondents were held liable, on their plea of Admit with Explanation, for violating 29 DCMR 316.1, which regulates the size of groups in child development centers and 29 DCMR 316.2, which requires that there be both a teacher and an assistant teacher or aide for each group.
9. Respondents have accepted responsibility for their violations.

IV. Conclusions of Law

1. Respondents' plea establishes that they violated 29 DCMR 315.3 by not employing a director for their child development facility who met the qualification standards specified in that regulation and that they violated 29 DCMR 315.4 by not employing qualified teachers.¹ A fine of \$500.00 is authorized for each violation. 16 DCMR 3222.1(g).
2. Having properly qualified personnel at a child development facility is critical to the health and safety of the children there, and facilities must act promptly to fill vacant positions with qualified persons. *DOH v. Tots Nursery School*, OAH No. C-00-80001 at 6 (Final Order November 14, 2000). In this case, the harm was exacerbated because Respondents' facility lacked both a qualified director and qualified teachers for an extended period. Although the death of Ms. Jackson's husband contributed to Respondents' delay in coming into compliance with §§ 315.3 and 315.4, the violations existed for a long time before his death. The director's position had been unfilled for about ten months before his death. The length of time that the teachers' positions were unfilled is less clear, but it is reasonable to infer that the lack of qualified teachers predated the inspector's March 29 visit to the facility. The facility, therefore, lacked qualified teachers for more than a month before the May 7 death of Ms. Jackson's husband. While this administrative court sympathizes with Ms. Jackson for her loss, her husband's death does not explain fully Respondents' failure to hire a qualified director in the

ten months before his passing or their failure to hire qualified teachers for at least six weeks before his passing (and possibly longer). If Respondents had complied with their obligation to fill these positions promptly, there would have been no violation by the time of his death.

3. Respondents have accepted responsibility for the violations of §§ 315.3 and 315.4, and ordinarily that would lead to some reduction in the fine. In this case, however, the duration of the violations and the greater danger posed by the simultaneous absence of a qualified director and qualified teachers outweighs Respondents' acceptance of responsibility. Respondents' previous violations of related regulations dealing with the appropriate number of qualified staff members also weigh against any reduction in the fines. Therefore, the separate fines of \$500.00 each for violating §§ 315.3 and 315.4 will not be reduced.
4. Respondents' plea also establishes that they violated 29 DCMR 325.13 by not having a medical form for one of their employees. A fine of \$500 is authorized for that violation. 16 DCMR 3222.1(r). The Government has not disputed the claim that Respondents had the form in their possession, although not at the child development facility. Respondents' explanation that the death of Ms. Jackson's husband on May 7 prevented them from sending it to the inspector or having it at the facility on or before May 22 is insufficient to excuse the violation, since Respondents have not shown the connection between his death and their inability to produce the form some fifteen days later.

¹ Section 315.3 lists six alternative combinations of education and experience that qualify a person to be a director of a child development center, while § 315.4 specifies four combinations of education and experience that qualify a person to be a teacher in a child development center.

5. Section 325.13, read in conjunction with 29 DCMR 326.7, only requires that a child development facility maintain a health record for an employee, not that the record be physically located at a specific site. *Cf. DOH v. Bridges Academy*, OAH No. I-00-40007 at 3 (Final Order September 8, 2000) (child's emergency medical form may be maintained in an office across the street from the facility). Nevertheless, the regulatory obligation to maintain certain records includes the obligation to have them readily available either for review by a Government inspector or for use by the facility as necessary. *DOH v. Symbral Foundation*, OAH No. I-00-40047 at 5 (Final Order May 12, 2000). Because Respondents have not shown that the form was made available promptly, the fine for this violation will not be suspended. They have, however, accepted responsibility for the violation and the fine accordingly will be reduced to \$375.00.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2001:

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **ONE THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS (\$1,375.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real or personal property owned by Respondents pursuant to D.C. Code § 6-2713(i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ **9/5/01**

John P. Dean
Administrative Judge